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EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

by and between

Silicon Valley Real Estate I, LLC, a Delaware Limited Liability Company

and

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

THIS EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2007 (“**Effective Date**”) by and between the Redevelopment Agency of the City of Milpitas, a public body corporate and politic (“**Agency**”) and Neuterra Real Estate Development, a Delaware Limited Liability Company, (“**Developer**”). Agency and Developer are hereinafter collectively referred to as the “**Parties**.”

RECITALS

- A. The Agency is the owner of that certain real property (the “**Property**”) consisting of approximately 3.34 acres located near the intersection of Tasman Avenue and Interstate 880 at Barber Lane in the City of Milpitas, known as Santa Clara Assessor’s Parcel No. 086-02-06. The Property is located within the Milpitas Redevelopment Project Area No. 1 (the “**Project Area**”) established by the Redevelopment Plan adopted for the Project Area pursuant to Ordinance No. 192, adopted on September 21, 1976 (as subsequently amended, hereafter the “**Redevelopment Plan**”) and within the area governed by the Midtown Specific Plan (the “**Specific Plan**”).
- B. The Agency seeks development of the Property consistent with the Redevelopment Plan and the Milpitas General Plan and applicable zoning.
- C. Developer has proposed development of the Property and adjacent property as a full service hotel with conference facilities, a surgical hospital with medical offices, a parking garage, and related amenities (the “**Project**”).
- D. The parties understand that Developer’s project is contingent upon the simultaneous acquisition or lease of approximately 3.4 acres in adjacent land from the Valley Transportation Agency.
- E. At its meeting of August 7, 2007, the Agency’s governing board directed staff to pursue negotiations with Developer regarding Developer’s proposed development of the Project and authorized Agency staff to prepare, and the Executive Director to sign, an agreement granting Developer exclusive rights to negotiate for the purpose of reaching agreement on a disposition and development agreement (“**DDA**”) whose terms and conditions would govern the conveyance of the Property and the development of the Project.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Good Faith Efforts to Negotiate. The Parties shall use their best efforts to successfully negotiate a DDA which shall describe the terms and conditions governing disposition of the Property and development of the Project. The Parties shall diligently and in good faith pursue such negotiations. This Agreement does not impose a binding obligation on Agency to convey the Property to Developer, nor does it obligate the Agency or the City of Milpitas (the “**City**”) to grant any approvals or authorizations required for the Project. Without limiting the generality of the foregoing, Developer expressly acknowledges that a DDA resulting from negotiations contemplated hereby shall become

contemplated hereby shall become effective only if the DDA is approved by the Agency's governing board ("**Agency Board**") following notice and hearing as required by applicable law and compliance with all other requirements of law, including without limitation the California Environmental Quality Act.

1.1 Disposition and Development Agreement. Subject to the approval of a definitive agreement by the Agency Board, the Parties preliminarily agree that the DDA will include the following terms:

1.1.1 Price. The purchase price for the Property shall be not less than Forty-Eight U.S. Dollars (\$48.00) per square foot unless the Parties reach mutual agreement that the fair market value of the Property is less or that it will be infeasible to develop the Project at such price.

1.1.2 AS-IS Conveyance. The Agency will have no responsibility for environmental remediation of any kind. The Agency makes no representations or warranties regarding the physical condition of the Property or its suitability for Developer's use.

1.1.3 Project. The Project will include a Class-A hotel of at least seven (7) stories and 250 guest rooms, the Silicon Valley Hospital, a parking garage and related landscaping and amenities. Developer agrees that no fewer than seventy five (75) spaces in the garage will be dedicated for the non-exclusive use by patrons of the Valley Transportation Agency and that Developer will provide a replacement bus/light rail transit stop on the Project site.

1.1.4 Development Costs; Design Review. Developer will be responsible for all Project costs, including without limitation all design, development, and construction costs and the cost of all on-site and off-site public improvements. The DDA will specify the schedule for Developer's submission and Agency review of design and construction drawings and plans.

1.1.5 Financing. Developer shall be required to demonstrate the financial feasibility of Project construction and operation, and shall be required to provide Agency with evidence of firm commitments for Project construction and permanent financing prior to Agency's conveyance of the Property.

1.2 Milestones. The Parties anticipate compliance with the following milestones during the Term:

August 28, 2007: Developer pays Deposit to Agency; Parties commence negotiations regarding the terms of the DDA. Developer will submit required deposit of \$50,000 for development plan processing, legal fees and environmental review into a private job account as specified by the City.

Developer submits financial data including project proforma to Agency.

October 29, 2007: Developer submits application materials necessary to commence environmental and Project review. Specific materials will be determined at a pre-application meeting, and shall include architectural drawings for the hotel, hospital, medical offices and related parking facilities. The pre-application meeting will be attended by Developer, Developer's team members, Agency, and members of the City's Development Review Team including without limitation, representatives from City's Planning, Building, Engineering, and Fire Inspection departments.

2. Developer's Exclusive Right to Negotiate With Agency. Agency agrees that it will not, during the term of this Agreement (the "**Term**") directly or indirectly, through any officer, employee, agent, or otherwise, solicit, initiate or encourage the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Property or the development of the Property, and Agency shall not engage any broker, financial adviser or consultant to initiate or encourage proposals or offers from other parties with respect to the disposition or development of the Property or any portion thereof. Furthermore, Agency shall not, directly or indirectly, through any officer, employee, agent or otherwise, engage in negotiations concerning any such transaction with, or provide information to, any person other than Developer and its representatives with a view to engaging, or preparing to engage, that person with respect to the disposition or development of the Property or any portion thereof.

3. Term. The Term of this Agreement shall commence on the Effective Date, and shall terminate one hundred twenty (120) days thereafter, unless extended or earlier terminated as provided herein. The Agency's Executive Director is authorized to extend the Term by an additional ninety (90) days upon the mutual written agreement of the Parties without further approval of the Agency Board.

4. Relationship of Parties. The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

5. Developer's Studies; Right of Entry. During the Term, Developer shall use its best efforts to prepare, at Developer's expense, any studies, surveys, plans, specifications and reports ("**Developer's Studies**") Developer deems necessary or desirable in Developer's sole discretion, to determine the suitability of the Property for the Project. Such studies may include, without limitation, title investigation, relocation analyses (if applicable), marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. Developer shall be responsible for obtaining Agency's advance written permission for access to the Property as may be necessary to prepare the Developer's Studies. In connection with entry onto the Property, Developer shall and hereby agrees to indemnify, defend (with counsel approved by Agency) and hold harmless the Indemnitees (defined in Section 14) from and against all Claims (defined in Section 14) resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors.

Agency may require Developer to execute a right of entry agreement satisfactory to Agency prior to entry onto the Property. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Developer shall provide Agency with copies of all reports and test results within ten (10) days following completion of such reports and testing, whether or not such reports and test results are completed prior to or after the expiration or earlier termination of this Agreement. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Developer's indemnification obligations, obligations to provide reports and studies, and obligations to discharge liens that attach to the Property as set forth in this Section 5 shall survive the expiration or earlier termination of this Agreement.

6. Agency's Reports and Studies. Within 15 days following the Effective Date, Agency shall make available to Developer for review or copying at Developer's expense all nonprivileged studies, surveys, plans, specifications, reports, and other documents with respect to the Property that Agency has in its possession or control.

7. Developer's Pro Formas and Evidence of Financing. During the Term, Developer shall obtain financing commitments from prospective lenders or financing partners for the Project. Prior to execution of the DDA contemplated by this Agreement, Developer shall provide Agency with a pro forma for the Project that confirms the financial feasibility of Developer's proposed redevelopment of the Property, and shall provide evidence satisfactory to Agency that Developer has secured binding commitments, subject only to commercially reasonable conditions, for all financing necessary for the successful completion of the Project. Agency shall not be obligated to seek approval of the DDA from its governing board unless and until the documents required by this Section have been provided.

8. Expenses. Except as otherwise expressly provided herein, all costs and expenses (including, without limitation, Agency staff, consultant and legal fees and expenses) incurred in connection with this Agreement and the activities contemplated hereby shall be paid by Developer in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) .

9. Confidentiality; Dissemination of Information. During the Term, each Party shall obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this Agreement; provided however, no Party shall be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the terms of this Section. Nothing contained in this Agreement shall prevent either Party at any time from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations.

10. Execution of Disposition and Development Agreement. If the Parties successfully negotiate a DDA, Agency shall prepare the report required pursuant to Health and Safety Code Section 33433, conduct the noticed public hearing required pursuant to Health & Safety Code Section 33431 et seq., and recommend approval of the DDA to the Agency Board. The Agency shall have no legal obligation to grant any approvals or authorizations for the Project until the DDA has been approved by the Agency Board.

11. Termination. This Agreement may be terminated at any time by mutual consent of the Parties. Agency shall have the right to terminate this Agreement upon its good faith determination that Developer is not proceeding diligently and in good faith to carry out its obligations pursuant to this Agreement. Agency shall exercise such right by providing at least ten (10) days' advance written notice to Developer which notice shall describe the nature of Developer's default hereunder. Notwithstanding the foregoing, if Developer commences to cure such default within such 10-day period and diligently prosecutes such cure to completion within the earliest feasible time but not later than thirty (30) days following the date of the notice, this Agreement shall remain in effect. Developer shall have the right to terminate this Agreement, effective upon 10 days' written notice to Agency, if the results of its investigation of the Property are unsatisfactory with respect to Developer's desired redevelopment activities or if Developer is unable to obtain other necessary approvals, rights or interests. Neither Party shall have the right to seek an award of damages as a result of the termination of this Agreement pursuant to this Section.

12. Effect of Termination. Upon termination as provided herein, or upon the expiration of the Term and any extensions thereof without the Parties having successfully negotiated a DDA, this Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 8 (Expenses), Section 9 (Confidentiality), Section 14 (Indemnification), Section 18 (No Brokers), and any other provisions that expressly so state, shall survive such termination. Provided further, that upon termination or expiration of this Agreement, Developer shall deliver to Agency, within 15 days of termination or expiration, all of the Developer's Studies not previously provided to Agency.

13. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Redevelopment Agency of the City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Facsimile: (408) 586-3056
Attn: Economic Development Manager

Developer: 11221 Roe Avenue, Suite 210
Leawood, Kansas 66211
Facsimile: (913) 647-6852
Attn: Kevin Stuckey

14. Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the Agency and the City of Milpitas and their respective elected and appointed officials, officers, agents, representatives and employees (all of the foregoing, "**Indemnitees**") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") arising out of or in connection with this Agreement; provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee. Developer's indemnification obligations set forth in this Section 14 shall survive the expiration or earlier termination of this Agreement.

15. Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

16. Entire Agreement; Amendments In Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

17. Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

18. Brokers. Each Party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction other than as disclosed in writing to the other Party. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

19. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

By: _____

Name: _____
Executive Director

APPROVED AS TO FORM:

By: _____
Agency Counsel

ATTEST:

By: _____
Agency Secretary

**NEUTERRA REAL ESTATE DEVELOPMENT, LLC
a Delaware Corporation**

By: _____

Name: _____

Title: _____